

NORMAN M. CROOKS  
v.  
AREA DIRECTOR, MINNEAPOLIS AREA OFFICE, BUREAU OF INDIAN AFFAIRS

IBIA 86-8-A

Decided July 24, 1986

Appeal from a decision of the Minneapolis Area Director, Bureau of Indian Affairs, finding that Norman M. Crooks was properly removed from the position of Chairman of the Shakopee Mdewakanton Sioux Community.

Affirmed.

1. Bureau of Indian Affairs: Generally--Indians: Law and Order:  
Tribal Constitutions, Bylaws, and Ordinances--Indians: Tribal  
Government: Generally

The Bureau of Indian Affairs has authority to interpret tribal law in order to determine the tribe's legitimate governing body.

2. Indians: Tribal Government: Elections--Indians: Law and Order:  
Tribal Constitutions, Bylaws and Ordinances

When a tribal governing body legislates to disenfranchise members who fall within a class of voters described in the tribal constitution, the legislation must be carefully scrutinized for validity.

3. Indians: Tribal Government: Elections--Indians: Law and Order:  
Tribal Constitution, Bylaws and Ordinances

In certain narrow circumstances, tribal legislation which disenfranchises members who fall within a class of voters described in the tribal constitution may be upheld.

APPEARANCES: David G. Ronald, Esq., Minneapolis, Minnesota, for appellant; James E. Townsend, Esq., Minneapolis, Minnesota, for the Shakopee Mdewakanton Sioux Community; Priscilla A. Wilfahrt, Esq., Office of the Field Solicitor, U.S. Department of the Interior, Twin Cities, Minnesota, for appellee. Counsel to the Board: Kathryn A. Lynn.

OPINION BY ADMINISTRATIVE JUDGE VOGT

On October 30, 1985, the Board of Indian Appeals (Board) received the administrative record in this appeal from the Bureau of Indian Affairs (BIA).

The appeal, which had been filed with the Deputy Assistant Secretary--Indian Affairs (Operations), was transferred to the Board under the provisions of 25 CFR 2.19(a)(2). <sup>1/</sup> Appellant Norman M. Crooks seeks review of a March 6, 1985, decision of the Minneapolis Area Director, BIA (appellee), concerning the validity of his removal from the office of Chairman of the Shakopee Mdewakanton Sioux Community (community). For the reasons discussed below, the Board affirms that decision.

### Background

Appellant had for many years been Chairman of the community. By letter dated December 7, 1984, appellant was given notice that a petition calling for his removal as Chairman had been signed by more than one-third of the community's eligible voters. Appellant was further informed that a special meeting of the General Council would be held on December 22, 1984, for the purpose of hearing and voting on the removal charges.

At the December 22 meeting, following discussion of the reasons for and against appellant's removal, including a presentation by his legal counsel, a vote on removal was taken. The vote at the meeting was 31 for removal and 7 against, with 1 vote held pending determination of the individual's voting eligibility. After the meeting, it was determined that the held vote should be counted, and the vote was then 32 for removal and 7 against.

In a letter dated January 15, 1985 (erroneously dated 1984), the Acting BIA Field Representative found that appellant had been properly removed. This decision was affirmed by appellee on March 6, 1985.

Appellant's appeal of appellee's decision, filed with the Deputy Assistant Secretary--Indian Affairs (Operations), was transferred to the Board without decision on October 30, 1985. On transfer to the Board, appellant and the community relied on the briefs and arguments already submitted. Appellee did not file a brief.

### Discussion and Conclusions

Appellant makes three arguments on appeal: (1) appellee incorrectly determined the number of eligible voters as of December 22, 1984; (2) appellee incorrectly determined that 32 votes were cast for removal; and (3) appellee incorrectly found that the vote on removal was not nullified by improper procedures.

[1] Initially, the Board notes, as has BIA throughout this proceeding, that BIA and the Department of the Interior must be very circumspect in approaching this case. The Department's position regarding the BIA's role in

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<sup>1/</sup> Section 2.19(a) states: "Within 30 days after all time for pleadings (including extension granted) has expired, the [BIA official exercising the review authority of the] Commissioner of Indian Affairs shall: (1) Render a written decision on the appeal, or (2) Refer the appeal to the Board of Indian Appeals for decision."

internal tribal disputes was recently expressed by the Assistant Secretary--Indian Affairs in a decision dated March 8, 1986, relating to the removal of the Chairman of the Coos, Lower Umpqua and Siuslaw Interim Tribal Council:

While the Bureau does not usually involve itself in internal tribal disputes, for purposes of carrying out the government-to-government relationship between the United States and Indian tribes, it is necessary for the Bureau to determine the identity, composition and authority of the tribe's governing body. For purposes of administering [the Bureau's] Federal duties and responsibilities, \* \* \* the Secretary is authorized to construe a tribe's governing documents to determine its legitimate governing body and whether certain actions taken by that body on behalf of the tribe [are] valid. \* \* \* However, in doing so, the Bureau must do so in a manner which is least disruptive of tribal sovereignty and self-determination \* \* \*.

March 8, 1986, decision at 1. In that decision, the Assistant Secretary affirmed the Portland Area Director's determination not to involve BIA in the dispute because it was an internal tribal matter which did not require BIA involvement.

Appellant first argues that appellee incorrectly determined the number of eligible voters in the community as of December 22, 1984. Appellant contends there were 67 eligible voters, rather than 62 as appellee determined. If appellant is correct, the 32 votes in favor of appellant's removal were insufficient to remove appellant from office because the community's removal ordinance, Ordinance No. 2, enacted on July 11, 1972, requires a vote of the majority of the eligible voters of the community to effect a removal.

Article IV of the community's constitution, entitled "Elections," provides: "All elections of officers, including the first election, shall be conducted under rules and regulations prescribed by the general council. Community members eighteen (18) years of age or over shall qualify as voters and, if elected, may hold office."

An unnumbered ordinance enacted by the community on May 13, 1975, provides:

1. It is hereby declared to be in the interests of the Community to limit voting to resident enrolled members.
2. No member may vote in any regular or special meeting of the General Council unless he or she has resided on the Shakopee Mdewakanton Sioux Reservation for a period of 30 days immediately preceeding [sic] the meeting. Members who have moved off the reservation must register with the Secretary upon returning to reside on the reservation. The 30 day period shall not commence until such registration shall be accomplished.

The ordinance was approved by the Acting Area Director on June 17, 1975.

Five community members were determined by appellee to be ineligible to vote because they failed to meet the residence requirement of the 1975 ordinance. 2/ Appellant contends that these individuals could not be deprived by a tribal ordinance of their constitutional right to vote for the election or removal of tribal officers.

Appellant suggests that the ordinance may not have been intended to apply to the election or removal of officers but only to other "less important" matters, unspecified by appellant. Although there is little direct evidence of the community's interpretation of the interaction between Article IV of its constitution and the May 13, 1975, ordinance, it appears from materials in the record that the community has probably applied the ordinance to election of officers. In any event, removal of officers, pursuant to Ordinance No. 2, is effected by a vote at a special meeting of the general council. The 1975 ordinance by its terms applies to voting at regular and special meetings of the general council. The Board is satisfied that the community intended the 1975 ordinance to apply to voting for the removal of officers.

Appellant's argument that the 1975 ordinance is an invalid abridgement of the constitutional voting rights of members is less easily addressed. The community's brief discusses the well-established principle that Indian tribes have the right to determine their membership and argues that the residence requirement is a reasonable limitation on voting. It does not address the question whether the community may impose such a limitation by ordinance, rather than by incorporating it into its constitution. 3/

[2, 3] Where a tribal constitution defines a class of eligible voters, as does the community's constitution, and does not specifically authorize the tribe's governing body to legislate regarding qualification of voters, as the community's constitution does not, 4/ the validity of a tribal ordinance which disenfranchises members who fall within the constitutional class of voters is questionable. Such an ordinance is potentially violative of both the tribal constitution and the Indian Civil Rights Act of 1968, 25 U.S.C. § 1302 (1982).

In this case, however, certain factors weigh in favor of the validity of the May 1975 ordinance. Most importantly, the ordinance was enacted by a vote of the community which would have been sufficient to adopt a constitutional amendment. The community's governing body, the general council, is

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2/ These five individuals are Valentina Ross, Lanny Ross, Kathy Crooks Gast, Kenneth Anderson, and Delores Walker.

3/ Many tribes have residence requirements in their constitutions. A 1952 Solicitor's opinion notes: "The ratio of tribal constitutions which make residence on the reservation a qualification of voters to those which do not is somewhat more than 3 to 1." Solicitor's Opinion, M-36141, 2 Op. Sol. on Indian Affairs 1582, 1584 n.4 (1952).

4/ The constitution does, however, authorize the governing body to enact resolutions and ordinances governing loss of membership. Article II, section 2. Thus the governing body has the constitutional authority to disenfranchise members through the more drastic means of disenrolling them.

composed of all persons qualified to vote in community elections. Constitution, Article III. The community's bylaws, Ordinance No. 3, enacted on July 11, 1972, provide that one-third of the eligible voting members shall constitute a quorum at general council meetings. The May 1975 ordinance states that it was enacted by a vote of 14 for and 3 against, at a meeting at which a quorum was present.

The community's constitution provides that it may be amended by a vote of the majority of qualified voters voting at a constitutional election, provided that at least 30 percent of those qualified to vote do vote. Constitution, Article VII. Since the 17 members who voted at the May 1975 meeting satisfied the one-third quorum requirement for general council meetings, they would have also satisfied the 30 percent requirement for a constitutional amendment election. Thus a 14 to 3 vote would have been sufficient to adopt a constitutional amendment. 5/ This is not a case where a representative legislative body has limited the class of voters described in the constitution but rather where the electorate itself has so limited it.

Moreover, the ordinance has been considered valid and enforced by the community since 1975, apparently without objection until this appeal. Appellant, who now challenges the ordinance, signed it in 1975 as tribal chairman. 6/

Under these particular circumstances, and in light of the respect for the community's right to govern itself embodied in Federal policy, 7/ the Board concludes that the Area Director did not err in applying the ordinance to determine the number of eligible voters of the community. Appellant does not challenge the Area Director's conclusion that the five community members at issue were not residents of the reservation for the period required by the May 1975 ordinance. Therefore, the Area Director's determination that there were 62 eligible voters on December 22, 1984, is affirmed.

Appellant also challenges the Area Director's determination that 32 votes were cast in favor of appellant's removal. Appellant asserts that the vote of one community member, Cynthia Soule, should not have been counted because her eligibility to vote was in question at the December 22 meeting. Although Ms. Soule was allowed to vote, her vote was held by the court

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5/ Even had a constitutional election attracted more voters than did the general council meeting, it appears that 14 voters would probably have constituted a majority. Although there is no evidence in the record of the number of eligible voters in 1975, the certification of election results for the constitution, adopted in 1969, and an amendment thereto, adopted in 1980, show that there were 13 eligible voters in 1969 and 32 eligible voters in 1980. Thirteen members voted in 1969 and 24 voted in 1980.

6/ Appellant's signature could not have validated an invalid ordinance. However, the fact that he, as the community's leader, evidently considered the ordinance valid undoubtedly influenced the community to rely upon the ordinance rather than seek a constitutional amendment.

7/ See, e.g., New Mexico v. Mescalero Apache Tribe, 462 U.S. 324, 334-35 and n.17 (1983); President's Statement on Indian Policy, 19 Weekly Comp. of Pres. Doc. 98 (Jan. 24, 1983); Assistant Secretary's Mar. 8, 1986, decision, quoted supra.

reporter pending determination of her status. 8/ Appellant argues that the procedure was invalid because it was not specifically authorized by tribal law or by Roberts Rules of Order, which had been adopted to govern the meeting. The record shows that the procedure whereby Ms. Soule was allowed to vote, and her vote held pending determination of her status, was announced at the meeting and was not objected to by appellant's attorney or anyone else. Thus, even though the procedure was not specifically delineated prior to the meeting, the general council must be deemed to have agreed to it during the meeting. The Area Director's determination that 32 votes were cast in favor of appellant's removal implicitly recognized the community's authority to employ the procedure. Appellant has presented no convincing argument why the Area Director should not have recognized the community's authority to do so. Accordingly, the Area Director's determination that 32 votes were cast in favor of appellant's removal is affirmed.

Appellant further argues that the Area Director should have found that the removal vote was nullified by improper procedures. Specifically, appellant asserts that the meeting should have been chaired by the Vice-Chairman rather than the Secretary-Treasurer. The Vice-Chairman had been the subject of a removal vote earlier in the meeting and, as the Area Director observed, the majority of the community members present were under the impression that he had been removed. 9/ The Area Director determined that, under the circumstances, any irregularities that might have occurred were not sufficient to render any actions taken void. Moreover, the transcript of the December 22 meeting shows that, prior to the removal proceedings, the community voted to adopt procedures which disqualified an officer from presiding at a removal hearing "should the officer be the subject of the removal hearing or should a hearing upon the removal of said officer be on the agenda for the same meeting of the General Council," and which further provided that "should both the Chairman and Vice-Chairman be disqualified from presiding over the hearing on a petition to remove an officer, the Secretary-Treasurer shall preside unless disqualified." Since the removals of both the Chairman and the Vice-Chairman were on the agenda, the Secretary-Treasurer properly chaired the meeting pursuant to the procedures adopted by the community.

Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the March 6, 1985, decision of the Minneapolis Area Director is affirmed.

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Anita Vogt  
Administrative Judge

I concur:

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Jerry Muskrat  
Administrative Judge

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8/ As noted above, she was later determined to be eligible to vote.

9/ It was later determined that the vote to remove the Vice-Chairman was insufficient.